

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

Stella B. Werner Council Office Building
100 Maryland Avenue
Rockville, Maryland 20850
(240) 777-6600

CASE NO. S-2559

**PETITION OF DAN CAPLAN'S MORTGAGE AND
REAL ESTATE CENTER (by Daniel M. Caplan)**

OPINION OF THE BOARD

(Public Hearing Date: May 7, 2003)

(Record Closed June 4, 2003)

(Effective Date of Opinion: August 21, 2003)

Case No. S-2559 is an application for a special exception pursuant to section 59-G-2.47 (Retail Establishments in a Multiple Family Dwelling) of the Zoning Ordinance, to permit the operation of a banking office. The petitioner proposes to (1) conduct a banking office rendering personal services to the residents of The Promenade; (2) facilitate lending in connection with apartment purchases or financing; (3) use the facility on a first-come-first-serve use basis during posted open hours and otherwise by appointment only; (4) operate during the day and early evening hours, adjusted to meet the demands of the center's users.

The Board of Appeals held a hearing on the application on Wednesday, May 7, 2003. Daniel M. Caplan appeared in support of the application. The Board received no correspondence or testimony in opposition. At the conclusion of the public hearing, the record was left open, a transcript was ordered, and the Board acted on the petition at its Worsession on June 4, 2003.

Decision of the Board: Special Exception **granted**, subject
to conditions enumerated below.

EVIDENCE PRESENTED

1. The subject property is Plat 10231, Pooks Hill Subdivision, located at 5225 Pooks Hill Road, Bethesda, Maryland 20814, in the R-H Zone.

2. The office space is 263 square feet, located on the arcade level of The Promenade building, one level below the lobby level. There are no entrances to the Mortgage and Real Estate Center directly from the exterior of the building.

3. Mr. Caplan appeared and testified that he has been running the mortgage and real estate center at The Promenade for six years. He has been a long-time resident of the cooperative apartment building. He is a mortgage banker with expertise in coop lending. His office at The Promenade is used primarily as a resource center for the building, which provides information and assistance to persons interested in purchasing or selling a coop. It is also used as a meeting place for real estate agents and prospective purchasers.

The center is available for use seven days a week by appointment. Mr. Caplan is generally in the office afternoon to early evening, Monday through Friday, sometimes on Sunday, by appointment. Mr. Caplan stated that he tries to be flexible and accommodate client's hours, so that some meetings may occur early in the morning and some later in the evening. In response to questions, Mr. Caplan stated that meetings generally include two to five people.

4. Maryland National Capital Park and Planning Commission (MNCPPC) technical staff analyzed the request and recommended approval, with conditions. Staff finds that the use will be located in the south wing of the building, on the ground floor or arcade level, which contains several other retail and personal service uses. There is a 65 car surface parking lot immediately adjoining the entrance to the arcade level, which is shared by the other retail establishments. Staff finds that the site is heavily landscaped with healthy and well-maintained trees, shrubs and flowers.

Staff finds the application consistent with the Bethesda-Chevy Chase Master Plan, approved and adopted in 1990. The Master Plan describes the surrounding Pooks Hill neighborhood as "a mix of zoning types and land uses" and a "high density residential community" which "has the appearance of internal compatibility." Staff finds that the proposed banking office inside The Promenade will not alter the character of the neighborhood.

Staff estimates that the proposed use will generate fewer than 5 traffic trips during peak commuting times, and finds that the center, serving primarily residents of The Promenade will not significantly increase traffic or otherwise impact the local area transportation network. . [Exhibit No. 17].

FINDINGS OF THE BOARD

GENERAL STANDARDS

Sec. 59-G-1.2. Conditions for granting a special exception.

59-G-1.2.1. Standard for evaluation. A special exception must not be granted absent the findings required by this Article. In making these findings, the Board of Appeals, Hearing Examiner or District Council, as the case may be, must consider the inherent and non-inherent adverse effects of the use on nearby properties and the general neighborhood at the proposed location, irrespective of adverse effects the use might have if established elsewhere in the zone. Inherent adverse effects are the physical and operational characteristics necessarily associated with the particular use, regardless of its physical size or scale of operations. Inherent adverse effects alone are not a sufficient basis for denial of a special exception. Non-inherent adverse effects are physical and operational characteristics not necessarily associated with the particular use, or adverse effects created by unusual characteristics of the site. Non-inherent adverse effects, alone or in conjunction with the inherent effects, are a sufficient basis to deny a special exception.

Effects which may be anticipated from a retail establishment in an apartment building include the presence of an office, activity and noise associated with the particular service, together with some parking impact.

The proposed use is located in the lower level of the building, away from residential units, and is expected to generate little traffic from outside. It is an office of 263 square feet, serving primarily residents of the building, which generally accommodates meetings of two to five persons. Thus its size, scale, scope, noise and traffic and parking effects will be minimal. There will be no lighting other than internal to the office, and no effect upon the environment.

The Board finds that all of the effects of the requested use will be within the range of physical and operational characteristics to be expected from a retail establishment in a multi-family dwelling unit, and that none of its effects will be non-inherent adverse effects.

59-G-1.21. General Conditions.

(a) *A special exception may be granted when the Board, the Hearing Examiner, or the District Council, as the case may be, finds from a preponderance of the evidence of record that the proposed use:*

(1) *Is a permissible special exception in the zone.*

The proposed use is permitted, by special exception, in the R-H Zone.

(2) *Complies with the standards and requirements set forth for the use in Division 59-G-2. The fact that a proposed use complies with all specific*

standards and requirements to grant a special exception does not create a presumption that the use is compatible with nearby properties and, in itself, is not sufficient to require a special exception to be granted.

As detailed below, the use so complies.

- (3) *Will be consistent with the general plan for the physical development of the District, including any master plan adopted by the commission. Any decision to grant or deny special exception must be consistent with any recommendation in an approved and adopted master plan regarding the appropriateness of a special exception at a particular location. If the Planning Board or the Board's technical staff in its report on a special exception concludes that granting a particular special exception at a particular location would be inconsistent with the land use objectives of the applicable master plan, a decision to grant the special exception must include specific findings as to master plan consistency.*

The Board adopts technical staff's finding of Master Plan consistency [See Evidence Presented, paragraph 4].

- (4) *Will be in harmony with the general character of the neighborhood considering population density, design, scale and bulk of any proposed new structures, intensity and character of activity, traffic and parking conditions, and number of similar uses.*

The use, housed in an existing office inside The Promenade, together with other similar uses, and generating little traffic from the outside will have little discernible impact on the character of the neighborhood.

- (5) *Will not be detrimental to the use, peaceful enjoyment, economic value or development of surrounding properties or the general neighborhood at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.*

The proposed use will be located in the arcade level of the building, away from residential units and provides a service to the residents of the building. There is ample existing parking. Thus, there will be no detrimental impact on surrounding properties.

- (6) *Will cause no objectionable noise, vibrations, fumes, odors, dust, illumination, glare or physical activity at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.*

The proposed use will be located in a small office on the arcade level inside the building. The only activity associated with the office will be meetings, scheduled

by appointment, regarding banking and real estate matters. Thus there is little prospect of any of the listed effects.

- (7) *Will not, when evaluated in conjunction with existing and approved special exceptions in any neighboring one-family residential area, increase the number, intensity, or scope of special exception uses sufficiently to affect the area adversely or alter the predominantly residential nature of the area. Special exception uses that are consistent with the recommendation of a master or sector plan do not alter the nature of an area.*

The requested use, intended primarily for the service and convenience of residents of The Promenade and with relatively low intensity as described above, will not cause an over-concentration of similar uses or alter the residential nature of the area, which the Master Plan describes as “a mix of zoning and land uses.”

- (8) *Will not adversely affect the health, safety, security, morals or general welfare of residents, visitors or workers in the area at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.*

This low-intensity office, providing service to building residents and generating little traffic, will have none of these adverse effects.

- (9) *Will be served by adequate public services and facilities including schools, police and fire protection, water, sanitary sewer public roads, storm drainage and other public facilities.*
- (i) *If the special exception use requires approval of a preliminary plan of subdivision, the adequacy of public facilities must be determined by the Planning Board at the time of subdivision review. In that case, subdivision approval must be included as a condition of the special exception.*

The subject property is already subdivided, and served by adequate public services and facilities.

- (ii) *With regard to findings relating to public roads, the Board, the Hearing Examiner, or the District Council, as the case may be, must further determine that the proposal will have no detrimental effect on the safety of vehicular or pedestrian traffic.*

The Board finds that the use will have little effect and certainly no detrimental effect on vehicular or pedestrian traffic.

SPECIFIC STANDARDS

Section 59-G-2.47. Retail establishments in a multiple-family dwelling.

Retail sales and personal service establishments in a multiple-family dwelling or group of dwellings may be permitted subject to the following requirements:

(a) Only the following types of establishments shall be permitted:

*Banks or savings and loan offices.
Barber and beauty shops.
Book stores.
Drug stores.
Dry cleaning and laundry pick-up stations.
Florists.
Food and beverage stores.
Gift shops.
Jewelry stores.
Laundromats.
Newsstands.
Offices, banking.
Restaurants.
Variety and dry goods stores.*

The requested special exception is for a banking office.

(b) The establishments shall be primarily for the service of the residents of the building or complex in which it is located, and no deliveries shall be made except to such residents.

Mr. Caplan testified that The Mortgage and Banking Center serves primarily residents of The Promenade. He proposes no external deliveries.

(c) There must be no entrances directly from the exterior to the establishments.

No such entrance exists.

(d) The establishments shall not be located on any floor above the ground-level, except that a restaurant may be located on a top floor or penthouse.

The use is located on the ground level.

(e) The establishments shall be so located and constructed as to protect tenants of the building from noise, traffic, odors, and interference with privacy.

The use is located on the ground level of the building, away from residential units.

Therefore, based upon the foregoing the Board grants the special exception subject to the following conditions:

Conditions of approval:

1. Petitioner shall be bound by his testimony and exhibits of record to the extent that such evidence and representations are identified in the opinion of the Board.

2. Operations of the special exception shall be limited to the 263 square-foot office.

3. The regular hours of operation are seven days a week, 7:00 a.m. to 7:00 p.m.; occasionally, meetings related to purchases of coop units may be scheduled outside those hours.

On a motion by Angelo M. Caputo, seconded by Allison Ishihara Fultz, with Louise L. Mayer and Donald H. Spence, Jr., Chairman in agreement and Donna L. Barron necessarily absent, the Board adopted the following Resolution:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland that the opinion stated above is adopted as the Resolution required by law as its decision on the above-entitled petition.

Donald H. Spence, Jr.
Chairman, Montgomery County Board of Appeals

Entered in the Opinion Book
of the Board of Appeals for
Montgomery County, Maryland
this 21st day of August, 2003.

Katherine Freeman
Executive Secretary to the Board

NOTE:

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date the Opinion is mailed and entered in the Opinion Book (See Section 59-A-4.63 of the County Code). Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County, in accordance with the Maryland Rules of Procedure.